

BEFORE THE  
PLANNING & ZONING COMMISSION  
OF THE TOWN OF WESTON

In the Matter of: Application of the Town of Weston, Moore Property,  
Map 17, Block 1, Lot 27, Lords Highway East,  
Proposed Weston Dog Park



Public Hearing: March 1, 2018

The undersigned residents of the Town of Weston, by and through counsel, request that this Commission disapprove of the Application of the Town pursuant to Connecticut General Statutes §8-24 to construct a dog park on the above-captioned property for each of the following reasons:

1. We hereby further intervene in this proceeding pursuant to Connecticut General Statutes § 22a-19 and request that this Commission disapprove because it will "involve conduct which is reasonably likely to have the effect of unreasonably polluting, impairing, or destroying the public trust in the air, water, or other natural resources of the state."

We elaborate below on the grounds for our intervention.

2. When this Commission disapproved, on May 1, 2017, of a previous application to create a dog park on this property, (Exhibit A) it cited, among the numerous reasons for its decision:

*[W]e believe that a more elegant solution would be to use existing park land to house a dog park.*

*{W]e urge that a further study be undertaken, in the hope that more creative solutions can be found to this problem.*

*{W]e believe that more neighborhood involvement is necessary, so that all constituencies can work collaboratively to resolve this matter.*

In an effort to respond to the reasons for your disapproval many of the undersigned wrote to the Board of Selectmen on September 25, 2017, to propose the creation of "an advisory committee representing diverse opinions and interests on the subject." (Exhibit B).

Your proposal and our request were summarily rejected by the First Selectman by letter on the following day, stating there had already been enough discussion. (Exhibit C).

For these, the foregoing and following reasons the Application should be disapproved pursuant to C.G.S. §8-24.

3. The Town agreed to make the above-captioned property subject to its Zoning Ordinance when it accepted an Executor's Deed to the property on February 13, 2003.

Schedule A of this Deed reads in relevant part:

*Said premises are conveyed subject to . . . zoning regulations and restrictions as may have been established by the Town of Weston. (Exhibit D)*

Connecticut's courts long ago held that when a municipality accepts a deed to real property it accepts the terms of that deed. *Town of Derby v. Alling*, 40 Conn. 410 (1873).

The application of Weston's zoning ordinances is particularly relevant in this case because while your Ordinance § 240-27, B *Municipal uses of Town-owned lots*, specifies that *All Town uses shall be permitted . . . only in locations fronting on, or having direct, safe access to a major or collector road . . .* the entrance and exit to the proposed dog park for 22 and as many as 44 vehicles would be on Lords Highway East, a country lane.

#### **Intervention Pursuant to C.G.S. § 22a-19**

Connecticut General Statutes § 22a-19 authorize us to intervene as parties to this proceeding by this verified pleading in which we assert that the above-captioned Application by the Town of Weston is "reasonably likely to have the effect of unreasonably polluting, impairing, or destroying the public trust in the air, water, or other natural resources of the state."

#### **A. Removal of and Damage to Remaining Trees.**

The Application, if approved, will result in the destruction and removal of at least 123 mature, live trees and potential damage to the root systems of an undetermined number of such trees, many of which are 80 to 100 years old, in a natural and undeveloped woodland and part of a contiguous greenway to construct a roadway approximately 1,280 feet long, a turnaround and parking lot for 22 cars.

These facts are documented by the Report dated February 16, 2018 of Matthew F. Weibel, a Certified Arborist of the Savatree Consulting Group. It is attached as Exhibit E to this Petition.

Trees have been determined to be a natural resource of this State. It is reasonable to assume that trees and their root system stabilize the landscape and absorb meaningful quantities of rainfall. This is a particularly urgent concern in connection with the Town's Application since the Moore property cannot manage the rain water falling on it and regularly inundates adjacent and down gradient residential properties with rain and ground water it is unable to absorb.

Intervenors and their expert Savatree, assert that removal of these trees will exacerbate those regular episodes of severe flooding during periods of modest to significant rainfall resulting from water emanating from the Moore property where the activities represented by the Application are proposed.

B. Pollution by Use of Asphalt Millings

The Applicant proposes to pave the entire 1,280 road way through the forest, turnaround and parking lot with asphalt millings which, when exposed to the grinding and pressure of traffic and leaching into storm and ground water, have been found to pose the risk of leaching lead, as well as other pollutants, which are harmful to trees.<sup>1</sup>

The Connecticut Department of Environmental Protection has warned about “the likelihood of contaminated leachate and mobilization of pollutants” from the use of “Asphalt pieces that are smaller than four inches....” (Exhibit F)

For similar reasons, the Morris County New Jersey Department of Law and Public Safety, among other public authorities throughout the United States, prohibits the reuse of recycled asphalt pavement and millings “as final resurfacing material, unless the [material] is bound with asphalt emulsion, or paved with hot mix asphalt or Portland cement concrete.” (Exhibit G)

These established risks will be heightened if asphalt millings are used at the Applicant’s property because the volume of drainage of rain and groundwater at and from the property is at odds with what the Applicant has represented. This is well-established by the expert findings by Trinkaus Engineering, LLC.

C. Applicant Inadequately Anticipates the Likelihood of Amplified Runoff, Ponding and Preexisting Flooding of the Property nor Flooding and Erosion of Adjacent and Nearby Properties.

The Report by Trinkaus Engineering LLC and its principal Steven Trinkaus, PE pinpoints the risks and inadequacies of Applicant’s proposal. (Exhibit H).

The consultant notes that a perched water table exists on the Moore property and explains that “The perched groundwater table leads to the uppermost soil layers to become very saturated at certain times of the year and when rainfall occurs during these periods, you will experience more surface runoff as the soil is already fully saturated.”

This should not come as a surprise to the Applicant. This property was evaluated and rejected in 2009, with the agreement of Town Engineer John Conte, for use as cemetery by the Town’s Cemetery Commission due to its extremely poor drainage characteristics created by the presence of a perched water table.<sup>2</sup>

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<sup>1</sup> See, Savatree Consulting Report at 5.

<sup>2</sup> Exhibit I.

The consultant further confirms that due to of the presence *“of surface ponding on this site and the downgradient nearby properties because of the perched groundwater condition as well as the slow ability of the of the soil to infiltrate rainfall, the proposed changes will significantly worsen the current condition.”*

Mr. Trinkaus further finds that the design for the proposed roadway *“will cause erosion along the soil cut. Any eroded material will then be deposited further downhill.”*

He reports that the selection and design of proposed drainage devices is inadequate, that they are likely to fail and that the Applicant’s calculations of rainfall and storm water volumes are inaccurate. Of particular concern, *“There are no provisions to handle the runoff from the driveway from the crest of the hill to the western end of the driveway. Any increase of impervious area will increase both the rate and volume of runoff being discharged toward downgradient private properties.”*

The consultant concludes *“As proposed the construction of a 20’ wide driveway, the two parking areas will result in increased runoff volumes and rates of runoff to Lords Highway East and those private properties below the proposed activities.”*

D. Adjacent and Nearby Properties Are Already Flooded and Eroded by Rainfall and Groundwater from the Applicant’s Property.

The adjoining and nearby properties of the intervenors and others are regularly flooded by rainfall, storm water runoff and ground water from a shallow water table which flows and/or drains from the Moore property due to the inability of soils on the Moore property to adequately absorb this water.

The most recent flooding event occurred during a two-day period on February 10-11, 2018 when approximately 1.2 inches of rain as measured at the weather station at the nearby Trout Brook Preserve observed fell on the Applicant’s property and surrounding areas.

By their Affidavit, intervenors Sidney and Joan Dudash, who live immediately adjacent to the Applicant’s property at 26 Lords Highway East documented the flooding of the Applicant’s own property and resulting flooding of their own land by

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waters coming from the Applicant's property on February 11, 2018. The photographs attached to their Affidavit leave no question that not only did Applicant's property flood and result in ponding but that the Dudash property was flooded by water from Applicant's property (Exhibit J).

Intervenor John Matluck, who lives below Applicant's property, resides at 11 Lords Highway East and whose property has been repeatedly flooded and eroded by water emanating from Applicant's property, made a series of videos to document the flooding of his property on February 11, 2018. (Exhibit K).

#### Pending Conservation Commission Proceeding

Intervenor's concerns about the removal of mature trees and the likelihood of exacerbated flooding as a result together with exacerbated flooding from the construction of a 1,280 roadway are also under review by the Conservation Commission. Its deliberations are scheduled to continue March 26, 2018.

#### E. The Applicant's Land, Known as the Moore Property, Has Been and Is Part of an Established Greenway.

The Moore property in its present state is part of a contiguous greenway, a natural resource formed by the adjoining Elizabeth Moore Preserve, and Troutbrook Preserve. That part of the greenway formed by the Moore property will be destroyed if the application is approved. State law, particularly Connecticut General Statutes §7-131d and § 12-107f, encourage the continued preservation of this open space.

The Moore property's importance as part of this greenway was explained by Selectman Stephan Grozinger during the January 18, 2018 Board of Selectmen's meeting:

The Aspetuck Land Trust owns 14-1/2 acres right next to [the Moore property] and it has an easement for another 13-acre conservation easement. So all together that's 63 acres of contiguous open space, which I think in itself, is very, very valuable. We would do well to think carefully about putting a dog park on that sort of property.

Construction of a 1,280-foot road, 22 car parking lot, turnaround and 3.5-acre dog park on this property will forever destroy an integral part of this greenway and damage land particularly well-suited to remain as open space.

#### F. Feasible and Prudent Alternatives Exist

Weston already benefits from a range of reasonable alternatives to the loss of mature trees, invasive construction, flooding and resulting unreasonable damage to the Town's natural resources that will result from construction of a dog park on the Moore property.

First, the Moore property itself, with its numerous pathways and trails is already available in its present state for use as a dog park. Anyone may drive or walk to it, enter, and allow their dogs to roam the property.

Second, the Elizabeth Moore and Trout Brook Preserves, managed by the Aspetuck Land Trust, are open to and welcome Westonites to explore with their dogs.

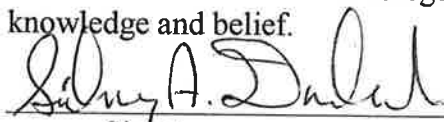
Third, the Town's transfer station on Godfrey Road East contains acres of unused open space, free of trees and readily accessible for use as a dog park. We have provided a Google map to show how this land can be readily adapted for use as a dog park without untoward environmental consequences and with a minimal financial burden to the Town. (Exhibit L).


For all the foregoing reasons, the undersigned intervenors urge this Commission to disapprove the Application to construct and operate a dog park on the Applicant's land, known as the Moore property pursuant to C. G. S. 8-24 and because it:


- A. Will have the effect of unreasonably polluting, impairing, and destroying the public trust in the air, water and other natural resources of this state and the Town of Weston and that there are feasible and reasonable alternatives to the Application before you.
- B. Ignores and fails to comply with standards and concerns already articulated by this Commission, and
- C. Will violate applicable provisions of Weston Zoning Ordinances to which it is subject.

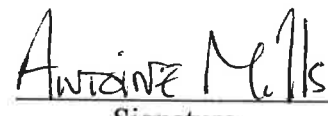
#### Intervenor's Oath

Each of us, being aware of the penalties for perjury, hereby swear and affirm that the statements contained in the foregoing Amended Complaint are true and correct to the best of our knowledge and belief.

  
Signature  
26 LORDS HIGHWAY EAST  
SIDNEY A. DUDASH  
Printed Name

  
Signature  
133 Old Hyde Rd Ext  
Clifford Feller  
Printed Name

  
Signature  
Dania Fellen Anderson  
Printed Name  
15 Richmond Hill Rd.  
Weston, CT 06883

  
Signature  
Antoinette Mills  
Printed Name  
143 DAVIS Hill Rd  
Weston CT 06883

Leslie C. Feller  
Signature  
133 Old Hyde Rd. Ext  
Leslie C. Feller  
Printed Name

Jean Dudash  
Signature  
26 Lords Highway East  
Jean Dudash  
Printed Name

Dennis Savitsky  
Signature  
184 Davis Hill Rd.  
Weston, CT

Subscribed and sworn before me on this 25<sup>th</sup> day of February 2018 at Weston,  
Connecticut

Stephen E. Nevas  
Signature  
Stephen E. Nevas  
Commissioner, Superior Court

Seth Anderson  
Signature  
15 Richmond Hill Road  
Printed Name

John Matluck  
Signature  
11 Lords Hwy E  
Weston CT  
Printed Name

Respectfully submitted,

THE INTERVENORS

By: Stephen E. Nevas  
Signature  
Stephen E. Nevas  
Nevas Law Group, LLC  
237 Post Road West  
Westport, Connecticut 06880  
(203) 557 8600  
(203) 226 3364 (Facsimile)  
Juris No. 306089

## **CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Intervention was served in hand on the Applicant in this matter on February \_\_\_\_, 2018.

John Conte  
Town Engineer  
Town of Weston  
Town Hall Annex  
Weston, Connecticut

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Stephen E. Nevas, Esq.  
Counsel to Intervenors



## **EXHIBIT A**



5/1/17

Planning & Zoning Commission

**REPORT ON THE PROPOSED DOG PARK TO BE LOCATED ON THE  
"MOORE PROPERTY"**

Pursuant to Section 8-24 of the Connecticut General Statutes, the Weston Planning & Zoning Commission has held a series of meetings to determine the appropriateness of a proposed dog park, to be situated on certain real property consisting of 36 acres of undeveloped Town-owned land located on Davis Hill Road (the Moore Property"). For the reasons set forth below the Commission has concluded that it must disapprove this proposal (the "Moore Proposal").

Before reciting our reasoning, the Commission wishes to emphasize that it is supportive of a dog park, in concept. We believe that creation of a dog park is wholly consistent with our 2010 Plan of Conservation and Development and would be a welcome amenity in our Town. We commend the work of Weston Dog Park, Inc. for fostering this idea and offering significant financial support, and hope that, with broader community participation; a workable solution can be reached under which the dog park idea becomes a reality in Weston.

The reasons for our disapproval of the Moore Proposal fall into three categories: 1) we believe it is critical that this Proposal, if it is to go forward, be brought to a Town Meeting for community approval; 2) we question whether the Moore Property is the appropriate location for a dog park; and 3) we believe that, at this stage, the issues raised by this Proposal have not been sufficiently addressed, and we urge that, before any Town Meeting, more work be done to address these open issues. We discuss these issues in more detail below.

The Town Meeting

Section 8-24 provides the Commission with the opportunity to review certain proposed uses of Town-owned property, but the Commission has no authority to mandate any particular use of Town-owned property. In other words, we can neither prevent, nor cause the creation of, a dog park on the Moore Property. We can, however, by issuing a negative report, require that in order for the Moore Proposal to go forward the Selectmen must convene a Town Meeting at which the public will be able to determine the appropriateness of the Proposal.

### The Moore Property

The Moore Property is undeveloped land located in a residential area. While Weston is of course primarily residential in nature, we believe that more work should be done to determine whether a dog park could be located in a more appropriate area. The Town already maintains a number of parks, and we believe that a more elegant solution would be to use existing park land to house the dog park. While we have received reports from Town employees, whose opinion we value and respect, to the effect that there is no other publicly-owned land suitable for a dog park, we urge that further study be undertaken, in the hope that more creative solutions can be found to this problem.

In addition, the Moore Property was purchased for over \$2.25 million in 2003, which translates roughly, in today's dollars, to \$3 million, if not more. We believe that given this significant investment by the Town further thought should be given to whether this is the highest and best use of this parcel before constructing a dog park. While a deed restriction prevents the Moore Property from being sold for development purposes, there does not appear to be any restriction on the Town leasing the Moore Property or otherwise developing the Property without selling it. We believe the Town should consider whether there might be more appropriate and productive uses for the Moore Property than a dog park.

Finally, we believe that more neighborhood involvement is necessary, so that all constituencies can work collaboratively to resolve this matter. While we are confident that no proposal, no matter how well thought out, will garner 100% support, we think that involving the surrounding neighborhood early in the process will tend to insure a better result.

For these reasons, we are issuing this negative report in the hope that more work can be done to examine the issues surrounding the Moore Property.

### Issues to be Addressed Regarding the Moore Proposal and any Future Proposed Dog Park

Aside from the location of the dog park, we believe that further information and study is necessary regarding the dog park itself. We hope that, prior to any Town Meeting on this matter, the following questions can be addressed:

#### 1) Liability

- Will Weston Dog Park, Inc. be responsible for grading, paving and fencing expenses, security cameras, waste disposal, insurance and any necessary dismantling of the park if it is removed from the Moore Property?
- Does the MOU between the Town and Weston Dog Park, Inc. cover these issues?
- Will the Town have residual liability for any problems at the dog park (e.g. dog bites, dog fights, or injuries not related to use as a dog park)?
- What is the budget for the ongoing maintenance of the dog park, and is the Town contemplating spending money for ongoing maintenance of the dog park?
- Does Weston Dog Park, Inc. have a credible plan for raising money to meet these expenses and cover such liabilities?

2) Effect on the Neighborhood

- Has there been sufficient analysis of potential dog barking and its effect on the neighborhood?
- Would the dog park be an attractive "hang-out" place after hours and disrupt the neighborhood?
- Has a formal traffic study been conducted?

3) Design of the Moore Proposal Dog Park

- Why is it 3.5 acres?
- Why only 15 parking spaces?
- If the parking area is full, will cars have to back out of the park onto the main road?
- What are the most appropriate hours of operation?
- Have the dog park rules been agreed to by Weston Dog Park, Inc.?
- Are they realistic?
- Who will enforce them?
- Will there be a double-gated entry?
- Will there be a separate section for small dogs?
- What signage will there be, and where should it be located?
- Will the park conform to the American Kennel Association guidelines for dog parks; i.e.:
  - a. Will there be cleaning supplies and covered garbage cans?
  - b. Will there be shade and water for both dogs and humans?
  - c. Will the dog park area be routinely mowed?
  - d. Should the dog park retain all of the native trees, or should they be removed or thinned out?
  - e. Who will pay for all of the above?
- Will the dog park be required to comply with any requirements of the Americans with Disabilities Act?

Lastly, in our meetings the First Selectman stated that the Town was still evaluating whether the Moore Property was the proper location for a dog park. We urge the Town to determine a location for a dog park that is intended to be permanent, rather than propose what might be a temporary fix. This is the final reason for our disapproval of the Moore Proposal.

The Weston Planning & Zoning Commission

May 1, 2017

## **Minority Report on Proposed Dog Park**

On April 24, 2017 the Weston Planning and Zoning Commission acting under its planning authority under Connecticut General Statute Sec. 8-24 voted 5-2 to disapprove a Board of Selectmen proposal to use a portion of Moore municipal property for a dog park. The following represents the minority view.

CGS Sec. 8-24 guides the municipality in bringing the proposal to commission for review. In part, it states: "no municipal agencies or legislative body shall... locate, relocate, substantially improve, acquire land for, abandon, sell or lease any airport, park, playground, school or other municipally owned property or public building... until the proposal to take such action has been referred to the commission for a report."

During a series of three public meetings the Commission gathered testimony and documents regarding a proposal for a dog park at the Moore property. The two members in the minority based their vote for approval on the following reasons:

1. The concept of a dog park falls within the scope of the 2010 Weston Town Plan of Conservation and Development under Community Facilities A. Recreation as stated below:

"Weston enjoys 582 acres of Town land for public recreation, .... An overwhelming desire for a stronger sense of community and belonging surfaced time and again at the public forums. However, the Questionnaire results indicated that residents do not favor expenditure of town funds to construct additional facilities at this time, but instead seek creative, affordable ways of meeting this need. Town Government, with the assistance of Parks and Recreation, should evaluate ways to bring the community together using available resources. ... "

2. As stated in the deed, the intent of the Moore estate in conveying the property to the "Town of Weston, the said grantee, and it assigns to them and their own proper use and benefit forever." The only restriction is that the land town "shall not be sold to a third party for residential and/or commercial development." A dog park falls within the scope of use indicated in the deed.

3. The commission reviewed reports and recommendations supporting the use of the Moore property for a dog park. These came from the Town Animal Control Officer, the Town Engineer, The Westport/Weston Health District, The Parks and Recreation Commission and the Conservation Commission.

4. A large body of testimony from the public favors the concept of a dog park. In addition, nearby residents to the Moore property raised reasonable concerns about access to and operation of a dog park. These concerns require further careful and thoughtful response by the Board of Selectmen working with the Parks and Recreation Commission. We are encouraged by the performance of the Town of Weston in responding to nearby

neighbors' concerns in other town projects. For that reason, we are confident that many of the concerns of the neighbors will be satisfactorily addressed.

5. To guide the Board of Selectmen in further pursuit of its dog park proposal we offer these points for consideration:

- With the assistance of the Parks and Recreation Commission along with appropriate input from nearby neighbors assembled as an ad hoc advisory council to the Parks and Recreation Commission address neighbor concerns.
- Determine through a town-wide survey how many residents with dogs licensed by the Town Clerk's office would use the park regularly.
- Make an assessment of liability risk and insurance needs.
- Determine the cost of construction and ongoing maintenance with the Parks and Recreation Commission whether the park would be economically sustainable.
- Determine whether any private sponsoring agent has the necessary funds and resources to pay for the cost of constructing and maintaining the park.
- Enter a proper memorandum of understanding with the private sponsoring agent that must be reviewed within three years after the start of operations.
- Stipulate that the town at its discretion may suspend operation of the park for any reason.
- Develop rules for operation of the park, hours of operation and appropriate monitoring of activities to assure dog and other waste is properly disposed and security surveillance and hours of operation.
- Review the aesthetics of the park on a continual basis to assure they fit within the town plan and town character.
- Avoid or, minimize for safety reasons only, the clearing of trees of more than 12 inches in diameter at four feet above the tree base.
- Avoid, or minimize for traffic safety reasons only, any cut and fill for construction of a driveway to access parking.

Submitted by Tom Failla and Britta Lerner 5-1-17

## **EXHIBIT B**

NEVAS  
LAW GROUP<sub>LLC</sub>

237 Post Road West  
Westport, Connecticut 06880  
203 557.8600 telephone  
203 226.3364 facsimile  
snevas@nevaslawgroup.com

Stephen E. Nevas  
*Also admitted  
Massachusetts  
District of Columbia*

September 25, 2017

Hon. Nina Daniels-First Selectman  
Hon. Chris Spaulding-Selectman  
Hon. Dennis Tracey-Selectman  
Weston Town Hall  
57 Norfield Road  
Weston, CT 06883

Lady and Gentlemen,

The undersigned Weston residents have asked me to forward the following proposal in the hope that a fair and constructive resolution can be found to the prolonged public debate about a dog park.

We wish to acknowledge the Board of Selectmen's decision to cancel the Town Meeting tentatively scheduled for October 4, 2017. Considering the many open questions about need, costs, environmental considerations and location, as well as questions raised about the process used to date, particularly the absence of broad Community involvement in the matter, we view the cancellation as an appropriate step. Almost eighteen months into the process and the project is at an impasse, in large part, we believe, because of that lack of Community input.

The Planning and Zoning Commission documented its disapproval of the Town's 8-24 submission in the report titled, "Report on the Proposed Dog Park to be Located on the "Moore Property, dated May 1, 2017." In that report, both the majority decision and the "Minority Report" advised greater Community involvement in any dog park proposal.

Since the decision to disapprove the 8-24 application was made, the BoS has focused on the P&Z suggestion that a Town Meeting be held. The Selectmen have not addressed other key findings and recommendations in the report, particularly those related to greater collaboration. We refer to the statements:

- "...we hope that, with broader community participation; a workable solution can be reached under which the dog park idea becomes a reality in Weston."



- “Finally, we believe that more neighborhood involvement is necessary, so that all constituencies can work collaboratively to resolve this matter.”
- “...appropriate input from nearby neighbors assembled as an ad hoc advisory council to the Parks and Recreation Commission to address neighbor concerns.”

We couldn't agree more. Further, research into how other municipalities across the US have established dog parks show Weston's process to be lacking in many areas, including but not limited to broad Community involvement.

We call on the Selectmen to immediately convene a committee representing diverse opinions and interests on the subject. In the interest of saving money and avoiding duplication of efforts, we also believe that all work on current proposals should be stopped.

We stand ready to fully participate in this new committee and look forward to your positive response.

Very sincerely,



Stephen E. Nevas

On behalf of:

Seth & Dania Anderson

Clifford & Leslie Feller

Brian, Freda and Carleigh Welsh

Dennis Savitsky

Marilyn Parker

Antoine and Joyce Mills

SF Gaynes

Kurt & Kristin Gibson

Sidney & Joan Dudash

Joanne Butler

## **EXHIBIT C**



September 26, 2017

Dear Mr. Nevas,

I am writing to acknowledge receipt of your letter and your request to stop all work on the dog park to have "community input." The fact is that we have had extensive community input, including a very well-attended public hearing where you and your clients provided their views along with nearly a hundred speakers in all. At that hearing, an estimated 150 attendees listened for 2 ½ hours to the many comments and points of view expressed.

Accordingly, the Board of Selectmen believes we have solicited and received the input of the community. We do not believe it is appropriate or in the town's best interests to stop work and repeat that process. In fact, your request represents shutting down public participation and limiting it to the points of view of a very few, rather than soliciting the whole town's participation in the process. Furthermore, the committee that represents the entire town, elected by the entire town, is the Board of Selectmen who are taking into consideration everyone's interests objectively.

We have cancelled the Town Meeting of October 4<sup>th</sup> to evaluate a revised proposal that was presented to the BOS on September 14<sup>th</sup>. Pending a review of that revised proposal, we will decide whether and when to proceed to a Town Meeting.

Cordially,

Nina

Cc: Dennis Tracy, Christopher Spaulding

## **EXHIBIT D**

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## EXECUTOR'S DEED

To all People to Whom these Presents shall Come. Greeting:

Know Ye, That Michael Moore, Executor of the will of Elisabeth Luce Moore late of New York, New York, deceased, by virtue of the last will and testament of Elisabeth Luce Moore and in consideration of the sum of Two Million Two Hundred Fifty Six Thousand Dollars and zero cents (\$2,256,000.00), received to the full satisfaction of the Town of Weston, does grant, bargain, sell and confirm unto the said grantee all the right, title, interest, claim and demand which the said Estate of Elisabeth Luce Moore had at the time of her decease, or which as such executor has or ought to have, in and to a certain piece or parcel of land situated in the Town of Weston, County of Fairfield and State of Connecticut, and bounded and described as set forth on Schedule A attached hereto and made a part hereof.

To Have and to Hold the above granted and bargained premises with the appurtenances thereof, unto the Town of Weston, the said grantee and its assigns to them and their own proper use and benefit forever. And the said executor does hereby covenant with the Town of Weston, the said grantee and its assigns, that Michael Moore has full power and authority, as executor of Estate of Elisabeth Luce Moore as aforesaid, to grant and convey the above described premises in manner and form aforesaid and for himself and his heirs, executors and administrators does further covenant to warrant and defend the same to the Town of Weston, the said grantee and its assigns, against the claims of any person or persons whomsoever, claiming by, from or under Michael Moore, as executor, as aforesaid. And the said executor does hereby declare that the above granted and bargained premises with the appurtenances thereof shall not be sold to a third party for residential and/or commercial development. The aforesaid declaration shall be binding upon the Town of Weston, the said grantee and its assigns and shall run with the land.

In Witness Whereof, Michael Moore as such executor of Estate of Elisabeth Luce Moore have hereunto set his hand this 19 day of February A.D. 2003.

Signed, Sealed and Delivered  
in presence of

Mary C. West  
Jeffrey J. Jara  
No

Estate of Elisabeth Luce Moore

By:

Michael Moore  
Michael Moore, as Executor

NYCORP-2229946.1

VOL 339PG0071

Schedule A

ALL that certain tract or parcel of land, situated in the Town of Weston, County of Fairfield and State of Connecticut, in quantity 36.12 acres, more or less, and bounded and described as follows:

NORTHERLY by highway, Lord's Highway, so-called;  
 EASTERNLY by land of Robert Keith, said line being the first stone wall west of the intersection of Lord's Highway and Davis Hill Road;  
 NORTHEASTLY again, and NORTHWESTERNLY by land of Robert Keith, said line being the first stone wall southerly of the intersection of Lord's Highway and Davis Hill Road;  
 EASTERNLY again, by highway, Davis Hill Road, so-called;  
 SOUTHERLY and again EASTERNLY by land of the heirs of Adolphus Russell;  
 SOUTHWESTLY again by land formerly of Eliza Davis, more lately of Maurice T. Moore;  
 WESTERNLY by land of Maurice T. Moore in part and in part by land formerly of Mattie Barrett, more lately of Edward H. DeLaford.

For a more particular description of said premises, reference is hereby made to "Map of Property Prepared for Maurice T. Moore at Weston, Connecticut, Scale: 1 in. = 100 ft., 1941, Samuel M. Hoyt, Jr., Co., Inc., Frederick P. Stabell, Pres., Civil Engineers & Surveyors, So. Norwalk, Conn., which map is to be filed in the Office of the Town Clerk of said Town of Weston.

Said premises are conveyed subject to building lines if established and to such building and zoning regulations and restrictions as may have been established by the Town of Weston.

RECEIVED FOR RECORD

11-37A

ATTEST

WESTON TOWN CLERK

FEB 26 1943

VOL 339PG 0070

2

STATE OF NEW YORK, )  
COUNTY OF Saratoga ) ss.:

On the 13<sup>th</sup> day of February in the year 2003 before me, the undersigned, personally appeared Michael Moore, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

MARY E. WEST  
NOTARY PUBLIC, STATE OF NEW YORK  
No. 01WE8041512  
QUALIFIED IN SARATOGA COUNTY  
MY COMMISSION EXPIRES MAY 8, 2006

/Kerry A. West-Cox  
Signature and Office of individual taking acknowledgment

MYCORP-1239446.1

## **EXHIBIT E**



# Tree Inventory

Prepared for

**Steven Nevas, Attorney**

For Service at

**Proposed Weston Dog Park  
Weston, CT**



914-299-5600

[www.savatree.com/consulting](http://www.savatree.com/consulting)

Prepared by  
Matt Weibel

Registered Consulting Arborist #534  
ISA Tree Risk Assessment Qualified  
ISA Certified Arborist #NJ-1065A  
February 16, 2018

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## WHY DID SAVATREE INVENTORY THE TREES AT THE PROPOSED WESTON DOG PARK?

The SavATree Consulting Group was retained to perform a tree inventory and assessment of all trees located within the limit of disturbance for a proposed entrance road and parking area for the planned Weston Dog Park in Weston, CT. For the majority of the entrance road, all trees measuring 5-inches and larger within 15 feet of the road centerline were included. At the end of the road, there is a circular cul-de-sac. All trees within 45 feet of its center point were included. Finally, in the area of the proposed parking, all trees within 25 feet were included. Our proposal was approved and it was determined that our assignment was to perform:

- On site ANSI A300 Level 2, 360-degree visual inspection of individual trees within the specified area;
- For all trees inventoried, recordation of: location\*; species; diameter; condition; and; distance from proposed centerline/center point.
- A web-based map of resulting inventory and tree data; and,
- A written report of findings.

\*Note: SavATree is not a surveying company, therefore, tree locations do not have sub-meter accuracy and may be off by 5 feet or more.

Field data collection occurred on February 12, 2018. Mr. Nevas provided me with the following relevant materials: a copy of the application to the Weston Conservation Commission that is dated January 25, 2018 and a copy of the current site plan.

## HOW DID SAVATREE CONDUCT THE ASSESSMENT?

SavATree deployed a Registered Consulting Arborist with mobile GIS and GPS technology (ArcGIS Online) to inventory all of the trees measuring five inches and larger located within the specified area. I collected data on tree diameter at breast height (4.5', referred to as DBH), tree location, species, condition, and distance from centerline/center point.

On February 12, 2018, I met Steven Nevas, Attorney; Sid Dudash, resident of 26 Lords Highway East; William Lomas, Tree Warden for the Town of Weston; and John Conte, Weston Town Engineer at the site. Thirteen wooden stakes were installed along the proposed centerline for the entrance road. Upon arrival, we walked the proposed centerline beginning at Lords Highway East. I began my data collection at the stake that is farthest in the woods. I have labeled this as Stake 1 in my notes. It is the center point for the cul-de-sac at the end of the proposed road.

Mr. Dudash assisted with my data collection by measuring tree diameters at my direction and helping measure tree distance from the proposed road centerlines.

I downloaded the data to Excel and analyzed it using Pivot Charts and Tables.

I uploaded the data to ArcGIS Online and exported the results to a web app for your use.

## WHAT DID SAVATREE FIND?

One hundred and twenty-three trees were inventoried and assessed within the study area. The final tree that we inventoried (Tree 123) is located approximately 100 feet from the proposed road entrance. Mr. Dudash believes that this tree will need to be removed in order to provide 200 feet of sightline clearance, however, Mr. Conte maintains that the tree will not be removed.

An Excel file with the complete West Dog Park Tree Inventory dataset has been provided as a separate document. The web app of the entire inventory is posted to:

<http://arcg.is/OC0zC8>

The map can be searched by tree number by clicking on the magnifying glass at the top of the page.

## TREE DIAMETER DISTRIBUTION

In the field, we collected tree dbh to the nearest tenth of an inch. These were placed into the nearest inch class for the table below.

Of the 123 trees that were inventoried, 51 (41.4% of the population) measured 5 through 11 inches in dbh. Fifty-two trees (42.3%) measured 12 through 19 and the remaining 20 (16.3%) trees exceed 20 inches in diameter.

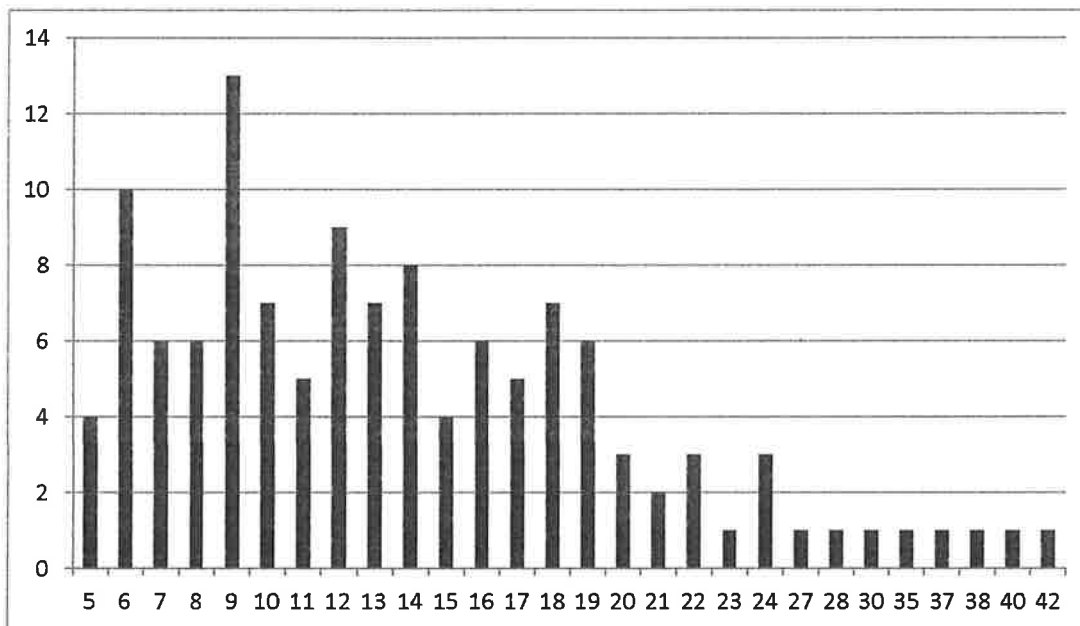


Figure 1 – Tree diameter distribution for trees scheduled for removal for the Weston Dog Park.

## TREE SPECIES DISTRIBUTION

The 123 trees within the inventory are made up of thirteen different species. They are: red maple, sugar maple, black birch, green & white ash, black cherry, black oak, pignut hickory, tulip poplar, Canadian hemlock, eastern red cedar, red oak, and pin oak. All of these species are native to Connecticut and typical for woodlands in the area.

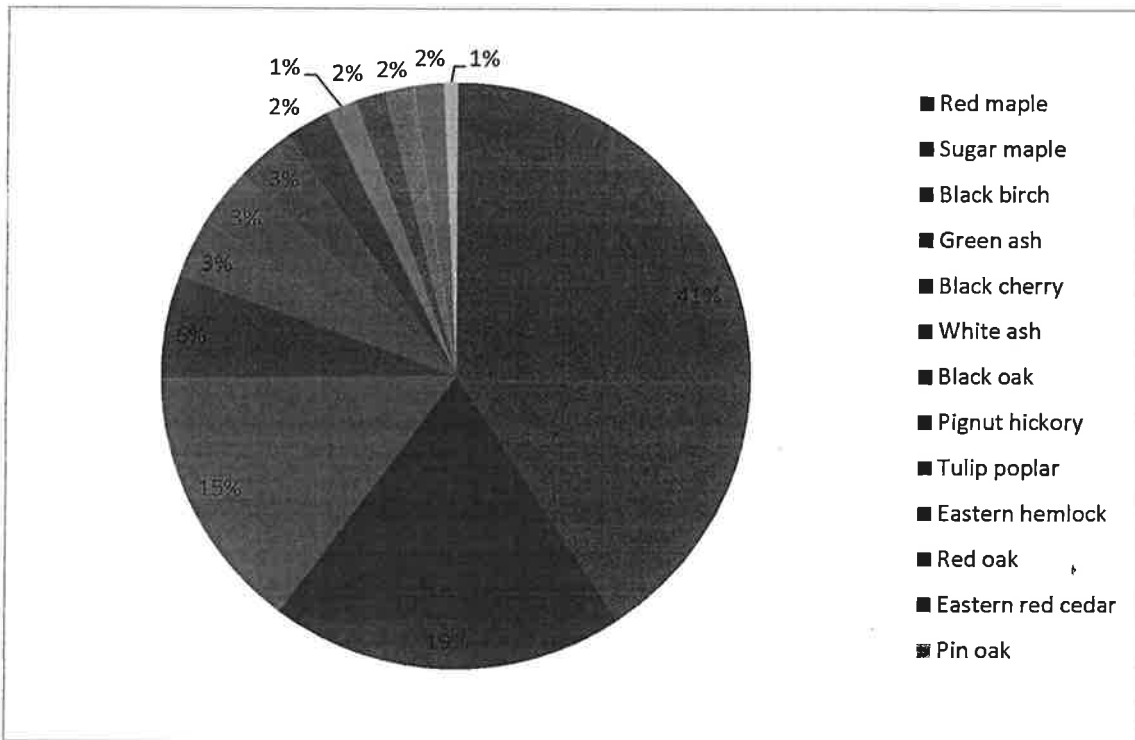


Figure 2 – Species distribution within the proposed Weston Dog Park road

## TREE CONDITION DISTRIBUTION

I assigned health condition ratings for each of the 123 trees in the inventory. Four ratings were possible: Good, Fair, Poor, and Critical. Figure 3 below shows the current breakdown of condition ratings at the property. Ninety-seven trees (79%) were in Fair condition; 14 (11%) were Good; 7 (6%) were Poor; and 5 (4%) were Critical. A few dead trees were present within the study area, but were not included in the inventory.

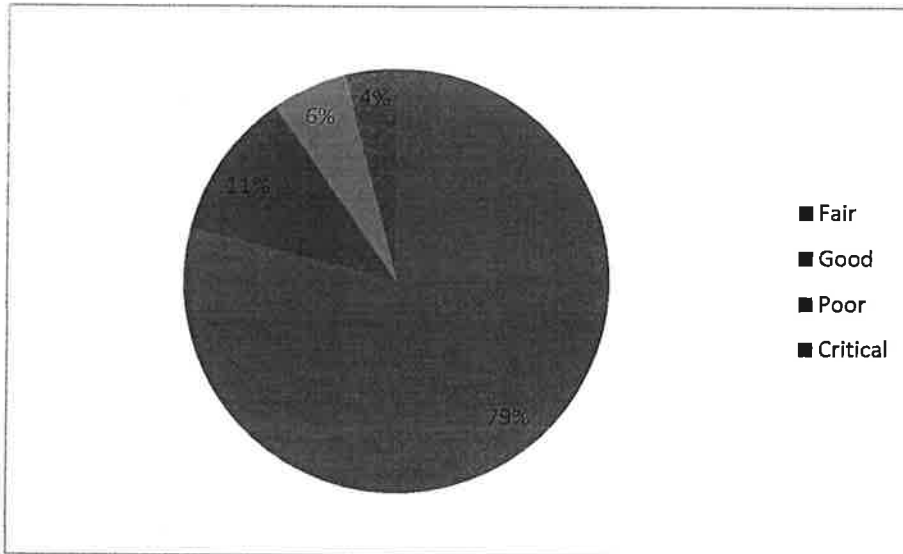


Figure 3 – Condition ratings for the 123 trees.

Emerald ash borer damage was observed on several of the ash trees in the inventory. Although treatment options are available, they are not practical for use in forested woodlands. Four of trees that are in Critical condition are ash trees with visible signs of emerald ash border infestation. It is anticipated that all of the untreated ash trees in the area will be dead within 5-10 years.

#### WHAT ARE THE POTENTIAL IMPACTS OF THIS PROJECT?

As part of my assignment, I reviewed the application to the Weston Conservation Commission filed by John Conte on January 25, 2018. On Page 2 of the Project Description section (Page 3 of the PDF document), it states:

*It is estimated that the total number of trees to be removed for the construction of the proposed driveway and parking area will be approximately 140 trees with diameters ranging from 4-12 inches, and a few having diameters up to 30 inches.*

Although the total number of trees is accurate, the data from my inventory indicates that the size of the trees to be removed has been misrepresented. The application states that only a few having diameters up to 30 inches (assumed to be starting from 12 inches given the prior sentence) will be removed. In fact, there are 63 trees (51.2% of the trees to be removed) that measure between 13 and 42 inches (Note: Mr. Conte stated that Tree 123 does not need to be removed. I measures 19 inches). There are six trees that measure 29.5 inches and larger.

My study was constricted to a specified distance from the center line or center point of the proposed roadway. However, there are trees that are beyond these set distances that will be impacted by this construction activity. In addition to the damage to the tree parts above ground, root systems are most often impacted during construction activities. The vast majority of any tree's root system is located in the top 6-12 inches of soil, which means that any construction activity can have a major impact. Excessive grade change, soil compaction, and direct damage to roots during excavation will change air, water, and nutrient availability for trees. Tree roots require both air and water, in the proper proportions, to function

properly. Many tree functions depend on a healthy root system. Damage to tree root systems is very difficult to remediate after the fact and may take years to develop.

A tree's critical root zone (portion of the root system that is the minimum necessary to maintain vitality or stability of the tree) is most commonly estimated to be one foot in radius for each inch of diameter at breast height. This means that the critical root zone for a 30-inch tree extends 30 feet from the base of that tree. Any construction activity within this distance is likely to impact the health and/or stability of the tree. Given the scope of my assessment, there are trees at the site that will have their critical root zone impacted that were not included in the inventory.

On Page 1 of the Project Description section of the application to the Conservation Commission, Mr. Conte states that "the entire proposed driveway will be constructed of asphalt millings...". There have been a variety of studies on the potential health/environmental impacts of asphalt millings. One study that was published by the New Jersey Department of Transportation in May 2017 (copies of this report and others are available upon request) showed elevated lead, aluminum, iron, manganese levels in samples from south, central, and northern NJ. The levels of each varied – and were not always above EPA guidelines - depending on where the samples were from and the parent soil. Of these elements, lead can have the greatest impact on tree health and root development (though most elements can be toxic at very high levels).

#### WHAT DOES SAVATREE RECOMMEND?

Based on the results of my initial inventory and assessment, I have the following recommendations:

- Perform an analysis of the asphalt millings that are currently stockpiled at the Transfer Station to determine if environmental contaminants are present and, if so, to what extent.
- Retain an ISA-Certified Arborist to expand the current inventory to include all trees that will have their critical root zones impacted by the proposed construction.
  - o The Arborist should create a tree protection plan for the project that will detail all required measures to reduce the impact of construction on the trees to be retained. It should also include a post-construction assessment and/or care plan, if needed.

## APPENDIX A - ASSUMPTIONS AND LIMITING CONDITIONS

1. Any legal description provided to the consultant is assumed to be correct. Any titles and ownership to any property are assumed to be good and marketable. No responsibility is assumed for matters legal in character. Any and all property is appraised or evaluated as though free and clear, under responsible ownership and competent management
2. Care has been taken to obtain all information from reliable sources. All data has been verified insofar as possible; however, the consultant can neither guarantee nor be responsible for the accuracy of information provided by others.
3. The consultant shall not be required to give testimony or attend court or any other meeting, public or private, by reason of this report unless subsequent contractual arrangements are made, including payment of an additional fee for such services as described in the original or subsequent proposal.
4. Loss or alteration of any part of this report invalidates the entire report.
5. Possession of this report or a copy thereof does not imply right of publication or use for any purpose by any other than the person to whom it is addressed, without the prior expressed written or verbal consent of the consultant.
6. Neither all nor any part of the contents of this report, nor copy thereof, shall be conveyed by anyone, including the client, to the public through advertising, public relations, news, sales or other media, without the prior expressed written or verbal consent of the consultant particularly as to value conclusions, identity of the consultant, or any reference to any professional society or institute or to any initialed designation conferred upon the consultant as stated in his qualification.
7. This report and values expressed herein represent the opinion of the consultant, and the consultant's fee is in no way contingent upon the reporting of a specified value, a stipulated results, the occurrence of a subsequent event, nor upon any finding to be reported.
8. Sketches, diagrams, graphs, and photographs in this report, being intended as visual aids, are not necessarily to scale and should not be construed as engineering or architectural reports or surveys.
9. Unless expressed otherwise: (1) information contained in this report covers only those items that were examined and reflects the condition of those items at the time of inspection; and (2) the inspection is limited to visual examination of accessible items without dissection, excavation, probing or coring. There is no warranty or guarantee, expressed or implied, that problems or deficiencies of the plants or property in question may not arise in the future.



## APPENDIX B – CERTIFICATE OF PERFORMANCE

I, Matthew K. Weibel, certify:

- That I have personally inspected the tree(s) and/or property referred to in the report, and have stated my findings accurately. The extent of the evaluation is stated in the attached report and the stated terms and conditions;
- That I have no current or prospective interest in the vegetation or the property that is the subject of this report and have no personal interest or bias with respect to the parties involved;
- That the analysis, opinions and conclusions stated herein are my own and are based on current scientific procedures and facts;
- That my analysis, opinions and conclusions were developed and this report has been prepared according to commonly accepted arboriculture practices;
- That no one provided significant professional assistance to me, except as indicated within the report;
- That my compensation is not contingent upon the reporting or predetermined conclusion that favors the cause of the client or any other party nor upon the results of the assignment, the attainment of stipulated results, or the occurrence of any subsequent events.

I further certify that I am a member in good standing of the American Society of Consulting Arborists and International Society of Arboriculture. I have been involved in the practice of arboriculture and the care and study of trees for over fifteen years.

Signed: Matthew K. Weibel

Date: February 16, 2018

## **EXHIBIT F**

## Memo

To: Waste Engineering and Enforcement Division Staff  
Patrick Bowe, Director, Remediation Division

From: Robert C. Isner, Director, Waste Engineering and Enforcement Division



Date: October 2, 2006

Subject: **Regulatory Clarification:**  
**Asphalt Millings are not Clean Fill**

---

Recent citizen and municipal inquiries about the regulatory status of asphalt millings suggest that it is important to distinguish asphalt fragments that must be managed as solid waste from asphalt fragments that may be managed as clean fill. Even if this is simply a refresher for you, please review this information. Also, I encourage you to share this information with staff in other divisions and hope it helps you when speaking with municipalities and other helpline callers.

"Clean fill" is defined within the DEP's Solid Waste Management Regulations (see Regulations of Connecticut State Agencies Section 22a-209-1) to include several materials including asphalt paving fragments. Specifically, the definition includes asphalt paving fragments which are "virtually inert and pose neither a pollution threat to ground or surface waters nor a fire hazard..."

To help evaluate how to manage asphalt fragments it is important to consider the size of the fragments.

- The general rule of thumb used by the DEP solid waste program and remediation program are "bigger fragments are better," that is, typically fist-size or greater than 4-inch chunks ARE fragments and may be exempt from regulation as a solid waste.
- Asphalt pieces that are smaller than 4 inches [millings, shavings, dust and the like], are typically NOT considered to meet the definition of clean fill. The reason for focusing on the size is that as the surface area of the asphalt increases (smaller pieces will have greater collective surface area), the likelihood for contaminated leachate and mobilization of pollutants also increases.

I hope this helps. Anyone may contact the Solid Waste Program at DEP (860)-424-3366 for further clarification. We do have someone assigned each day to help provide this type of technical assistance.

## **EXHIBIT G**

# Environmental and Public Hazards

The bitumen binder used in asphalt paving applications contains a relatively high concentration of a family of organic compounds that has the potential to pose human health and environmental concerns in certain circumstances, especially when asphalt material is ground into very small particles that easily blow off of or wash from the surface. These compounds, known as polycyclic aromatic hydrocarbons (PAHs) are present in RAP at higher levels than the criteria established by the NJDEP for general use in a loose fashion on land. RAP used alone without a paved top surface has the potential to significantly migrate from the roadway through the actions of water, wind, and physical displacement and possibly contaminate surrounding soils and/or surface water sediments. Traffic traveling on the unpaved RAP could generate dust containing the compounds referenced above and the dust would be a major migration route of the RAP to the surrounding environment.

## Vehicle Requirements

NJDEP solid waste vehicle registration for vehicles hauling RAP is not required for the transport of RAP for reuse and/or recycling. NJDEP solid waste vehicle registration is required for the transport of RAP for disposal.



MORRIS COUNTY  
DEPARTMENT OF LAW  
AND PUBLIC SAFETY

OFFICE OF HEALTH  
MANAGEMENT

PO Box 900

Morristown, NJ 07963-0900

Located at

634 West Hanover Ave., Morris Township, NJ 07961

Phone: 973-631-5484

Fax: 973-285-6905

Web: <http://www.morrishumanseervices.org/health>

Solid Waste Enforcement

Phone: 973-347-1106

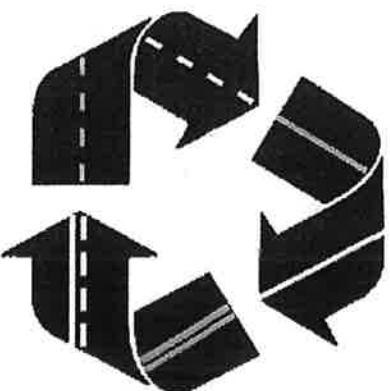
Fax : 973-347-3784

This pamphlet and the information contained herein shall not constitute legal advice and should be not relied upon in lieu of consultation with the appropriate legal advisors. In addition, the contents of the pamphlet are not intended to supersede, abridge or alter the regulations set forth by the New Jersey Department of Environmental Protection ("NJDEP").

For further information regarding NJDEP and asphalt millings, go to the NJDEP Website:  
<http://www.state.nj.us/dep/deshw/>

Printed: June 2014

# Reuse of Recycled Asphalt Pavement and Millings (RAP)



Office of Health  
Management

MORRIS COUNTY

# Recycled Asphalt Pavement (RAP)

## Background

It is the policy of the New Jersey Department of Environmental Protection (NJDEP) and Morris County to encourage and promote the reuse of recycled asphalt pavement (RAP). The permitted and prohibited uses of RAP are regulated by the NJDEP in N.J.A.C. 7:26 and 7:26A.

This pamphlet is provided by the Morris County Office of Health Management as a guidance document summarizing the regulation pertaining to the reuse of RAP.

**Definition: Recycled Asphalt Pavement (RAP):** means asphalt millings (the material produced from the milling of roads before repaving) and pieces of asphaltic roadway pavement removed from the roadway surface or sub-base, or from other asphalt-paved surfaces such as parking lots.

## Storage of RAP

Asphalt millings must be stored in a manner that will prevent runoff from exiting the pile. There is a 6-month storage limit.

## Allowed Uses of RAP

- Taken directly to and used by asphalt manufacturing plants for direct incorporation into hot mix asphalt or warm mix asphalt (in accordance with NJDOT standards)
- Sub-base material under concrete slabs for nonresidential buildings (requires filing of deed notice)
- Nonresidential roadway or construction related activities and under nonresidential building structure slabs that are infrequently occupied (salt storage)
- Roadway and parking area soil aggregate sub-base if RAP is placed directly beneath and is fully contained by paved surface (hot mix asphalt or Portland cement concrete)
- Constructing or repaving roadways or vehicle use areas under certain conditions
- Used in surfacing materials (appropriate binder must be applied)
- Surface material in roadway edge stability and guard-rail based material
- Base material under impervious surfaces such as footings, foundations, and slabs for transportation storage buildings

## Prohibited Uses of RAP

- As final resurfacing material, unless the RAP is bound with asphalt emulsion, or paved with hot mix asphalt or Portland cement concrete
- In wetlands, flood fringe, floodways or buffers to these regulated areas, unless such use is in conjunction with the repair, maintenance, or replacement of an existing vehicular paved surface, roadway or parking lot, and is undertaken in accordance with the requirements of the Freshwater Wetlands and Flood Hazard Acts
- As fill material at any Clean Site, except as authorized by NJDEP
- In the reclamation of quarries of unconsolidated materials (e.g., sand, gravel)
- As fill material, except for uses as provided in accordance with New Jersey State law.
- In areas that are less than two feet above high water table

## Recycling of RAP

If recycling asphalt millings, they must be deposited only at an approved recycling facilities permitted to accept asphalt millings for recycling.

## **EXHIBIT H**



**Trinkaus Engineering, LLC**  
114 Hunters Ridge Road  
Southbury, Connecticut 06488  
203-264-4558 (ph & fax)  
E-mail: [strinkaus@earthlink.net](mailto:strinkaus@earthlink.net)  
<http://www.trinkausengineering.com>

February 16, 2018

Mr. Stephen Nevas, Esq.  
Nevas Law Group, LLC  
237 Post Road West  
Westport, Connecticut 06880

Re: Proposed Dog Park  
Town of Weston  
Lords Highway East  
Weston, Connecticut

Dear Mr. Nevas,

At your request, I have reviewed the plans and documentation available on the Town of Weston website for the above referenced project. I have also reviewed photographs and videos taken during recent rainfall events on the subject and adjacent properties. I have the following comments on the plans.

Engineering Comments:

1. The soils on the site of the proposed driveway and dog park itself are Paxton and Woodbridge. Both of these soils have a restrictive layer located between 18" and 30" below the ground surface which causes a perched groundwater condition to occur during all but the driest times of the year. The perched groundwater table leads to the uppermost soil layers to become very saturated at certain times of the year and when rainfall occurs during these periods, you will experience more surface runoff as the soil is already fully saturated.
2. There is clear evidence of surface ponding on this site and the downgradient nearby properties because of the perched groundwater condition as well as the slow ability of the soil to infiltrate rainfall, the proposed changes will significantly worsen this current condition.
3. The proposed dog park will require the removal of 3.5 acres of trees, the removal of the stumps and then the grading of the dog park prior to seeding. The removal of 3.5 acres of trees the regrading of the soils for the dog park will significantly reduce the natural infiltrative capacity of the soil and result in higher rates and volumes of runoff from the dog park itself. This change in hydrology has not been accounted for in the submitted drainage report.
4. The proposal is to construct a 20' wide road from Lords Highway East to the town of the property to provide access to the future dog park. The access will be



20' in width with two area for parking. According to the detail found on the plans, the driveway surface will be made from bituminous concrete milling. As proposed, there is no curbing along either side of the 20' wide driveway. As portions of the initial 740' of the driveway are located in a slight cut, water will be channeled along this edge and will cause erosion along the soil cut. Any eroded material will then be deposited further downhill. This will be an ongoing maintenance concern and will result in more runoff being directed to Lords Highway East.

5. Approximately 710 lf of 20' wide driveway (14,200 square feet) and a small parking area (1,500 square feet) will be directed to the two drains at the bottom of the driveway. The yard drains with a grate 24" x 24" are proposed at the bottom of the driveway. This is too large of a drainage area to be fully captured by these catch basins which will result in increased flow rates and volumes being discharged onto and across Lords Highway East on to private property.
6. There is a single pair of catch basins located at station 0+30 of the driveway which will direct runoff to 58 lf of Recharge 330 HD units. There are no elevations for the Recharger units, but the bottom of the unit appears to be at elevation which is about 36" below existing grade. Based upon the soil test result in this area, the bottom of the Recharger unit will either be at or below the elevation of the seasonal high groundwater in this portion of the site. If the bottom of the system is at or below the seasonal high groundwater level, the functionality of the system will be adversely affected.
7. There are no elevations for the inlet and outlet pipe from the Recharger system. According to the drainage report, the 4" outlet pipe will be located 1.71' above the bottom of the Recharger system. This implies that the system will always have approximately 1.71' of water stored in the system as there is no evidence that any amount of infiltration will occur. Therefore, the system as proposed is undersized to handle the runoff from the driveway as the submitted computations are using the storage volume below the elevation of this outlet pipe.
8. It is proposed that the yard drains are connected by a 6" PVC pipe. This is insufficient to handle the anticipated flows and can also be prone to clogging as the yard drains will not have any measureable sump below the outlet invert elevations.
9. There is a discrepancy in the drainage calculations. A Runoff Curve Number (RCN) of 92 is used for the proposed driveway surface of compacted asphalt millings. This RCN value should be 98 as once the milling are placed and compacted, they act like an impervious surface having a RCN of 98. Using a RCN of 92 for the driveway will cause the peak rate and runoff volume to be under estimated.
10. For the Time of Concentration calculation only shallow concentrated flow is used. This is incorrect. There is always overland flow prior to shallow concentrated flow.
11. There are two analyses for post-development conditions and it is not clear what the exact watershed boundaries are for each area. In one case, 2.77 acres will generate 13.76 cfs, in the other 0.44 acres will generate 3.11 cfs (this appears to be the area which will be directed to the new yard drains). Without an accurate

map showing the watershed boundaries, it is not possible to determine the accuracy of the information submitted.

12. There are no provisions to handle the runoff from the driveway from the crest of the hill to the western end of the driveway. Any increase of impervious area will increase both the rate and volume of runoff being discharged toward downgradient private properties.
13. The proposed siltation fence running roughly parallel to the proposed driveway is incorrect and will result in highly channelized flow along the face of the silt fence, resulting in erosion of the native soils. At the end of the fence the eroded material will be discharged onto the ground surface and possibly onto Lords Highway East.
14. While a detail is shown for a construction entrance, it is not shown on the submitted site plan.
15. There are no erosion control measures for the work at the top of the hill (near the parking area and cul-de-sac). There are also no erosion control measures for the removal of the stumps and regrading of the area of the dog park itself.

#### Conclusion:

As proposed the construction of a 20' wide driveway, the two parking areas and the clearing of trees on 3.5 acres for the dog park will result in increased runoff volumes and rates of runoff to Lords Highway East and those private properties below the proposed activities.

Please contact my office with any questions.

Sincerely,  
Trinkaus Engineering, LLC



Steven Trinkaus, PE

## EXHIBIT I



Greenwood Cemetery

TOWN OF WESTON CEMETERY COMMITTEE  
Town Hall Meeting Room  
Minutes of November 18, 2009

Present: Richard Wolf, Pam Bochinski, Hal Mathews, Stewart Pearl, Benjamin Hume; Margaret Wirtenberg; John Conte, Town Engineer

The meeting was called to order by Chair. Richard Wolf at @7:35pm.

Minutes of the November 4, 2009 meeting were approved with two corrections (Pearl, Wolf).

PROPERTIES ENGINEERING DETAIL DISCUSSION

Town Engineer John Conte distributed reports and walked Committee thru maps of sites. He reported on the status and soil types of four (4) properties appearing to be the best candidates, after review with the old and new administrations, from the list provided by the Committee, for a Town Cemetery.

Jarvis Military Academy

- Good soils (Paxton).
- Costly to relocate septic system, also to run a waterline from Town watersystem (if well at Jarvis is abandoned).
- Existing engineering studies from prior proposals for the property.

Moore Property

- The administration does not favor going further with this site, as its main soil type (Woodbridge) is not appropriate (tendency to have perched water table) for cemetery use.
- No test pits.

Fromson-Strassler

- Access an issue.
- Town would have to negotiate with neighbors on Upper Parish Drive for use and maintenance of this private road.
- 1000' of loop road for vehicle/hearse.

## **EXHIBIT J**

**AFFIDAVIT**

STATE OF CONNECTICUT	)	
	)	ss. Weston, February, 2018
COUNTY OF FAIRFIELD	)	

The undersigned, being first duly sworn do depose and say that:

1. We reside at and own the property at 26 Lords Highway East, Weston, Connecticut.

2. Our property is immediately adjacent to and abuts a 36-acre parcel owned by the Town of Weston, bordered by Lords Highway East and Davis Hill Road, known as the "Moore Property."

3. For an extended period of time, when it rains our property becomes flooded by water that flows from the "Moore Property" on to our own.

4. Beginning on February 10 and continuing to February 11, 2018, during an extended period of rain, the "Moore Property" became flooded by the ponding of water immediately adjacent to our property and that ponding in turn flooded our property.

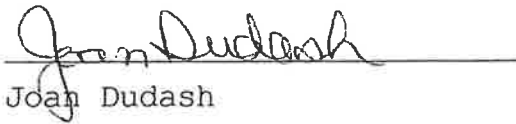
5. We photographed the ponding and flooding described above on February 11, 2018.

6. The photographs we made and which clearly show the

ponding of water on the "Moore Property" and resulting flooding of our property on February 12, 2018 are attached to this Affidavit as Exhibit A.



Sidney Dudash



Joan Dudash

Subscribed and sworn before me this 18<sup>th</sup> of February 2018.



Stephen E. Nevas

Commissioner of the Superior Court

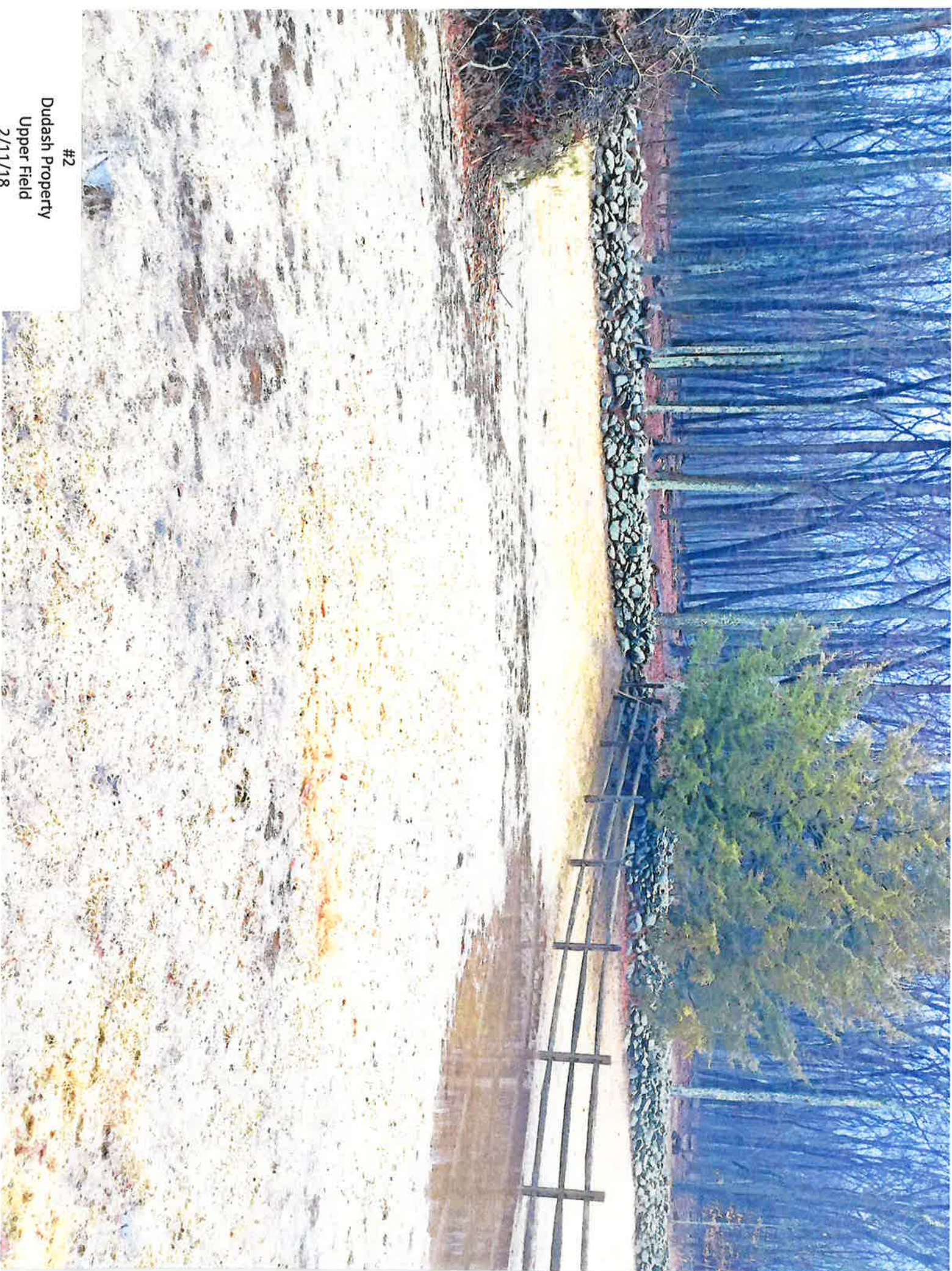
## **EXHIBIT K**





#1  
Dudash Property  
Riding Ring  
2/11/18





#2  
Dudash Property  
Upper Field  
2/11/18

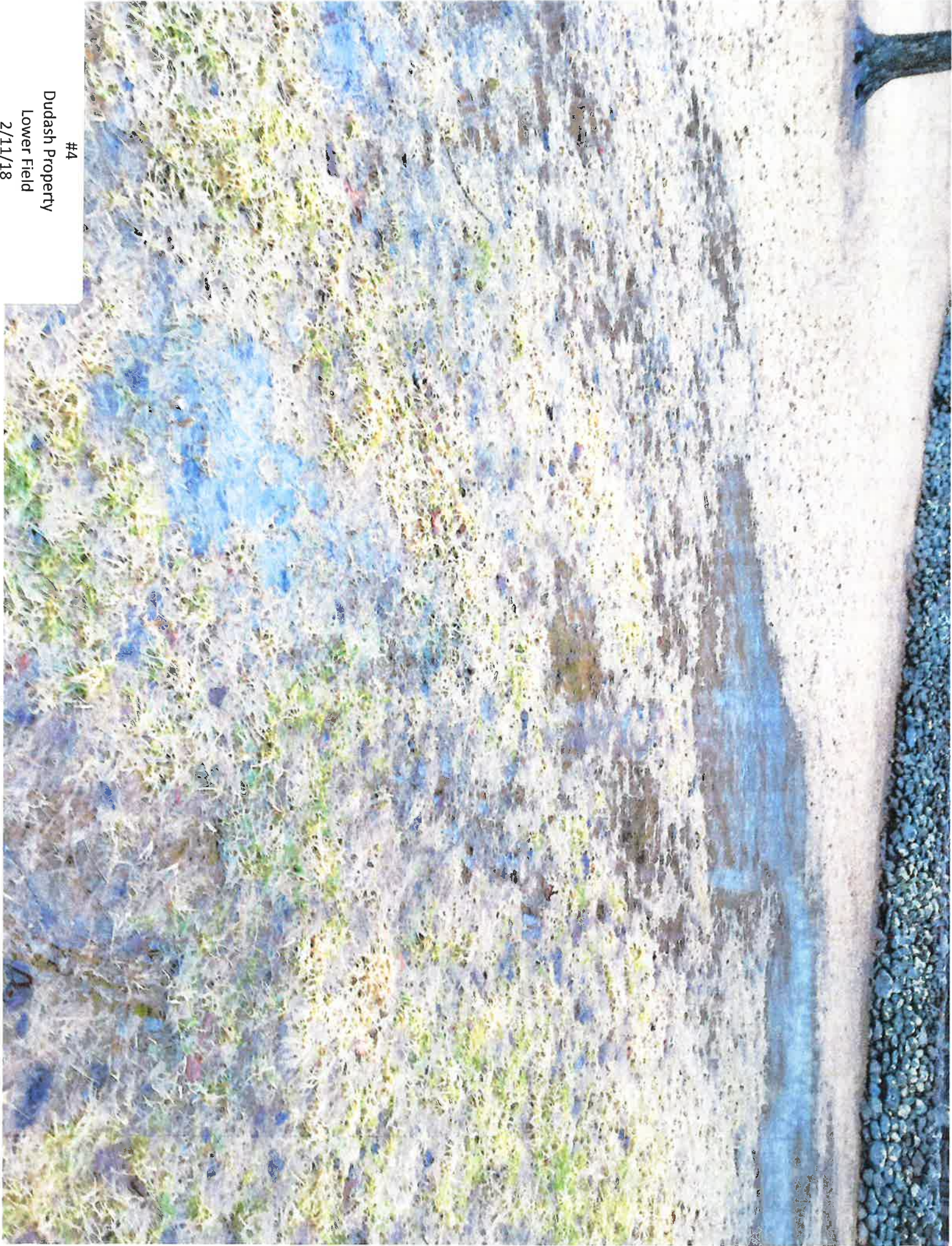
2





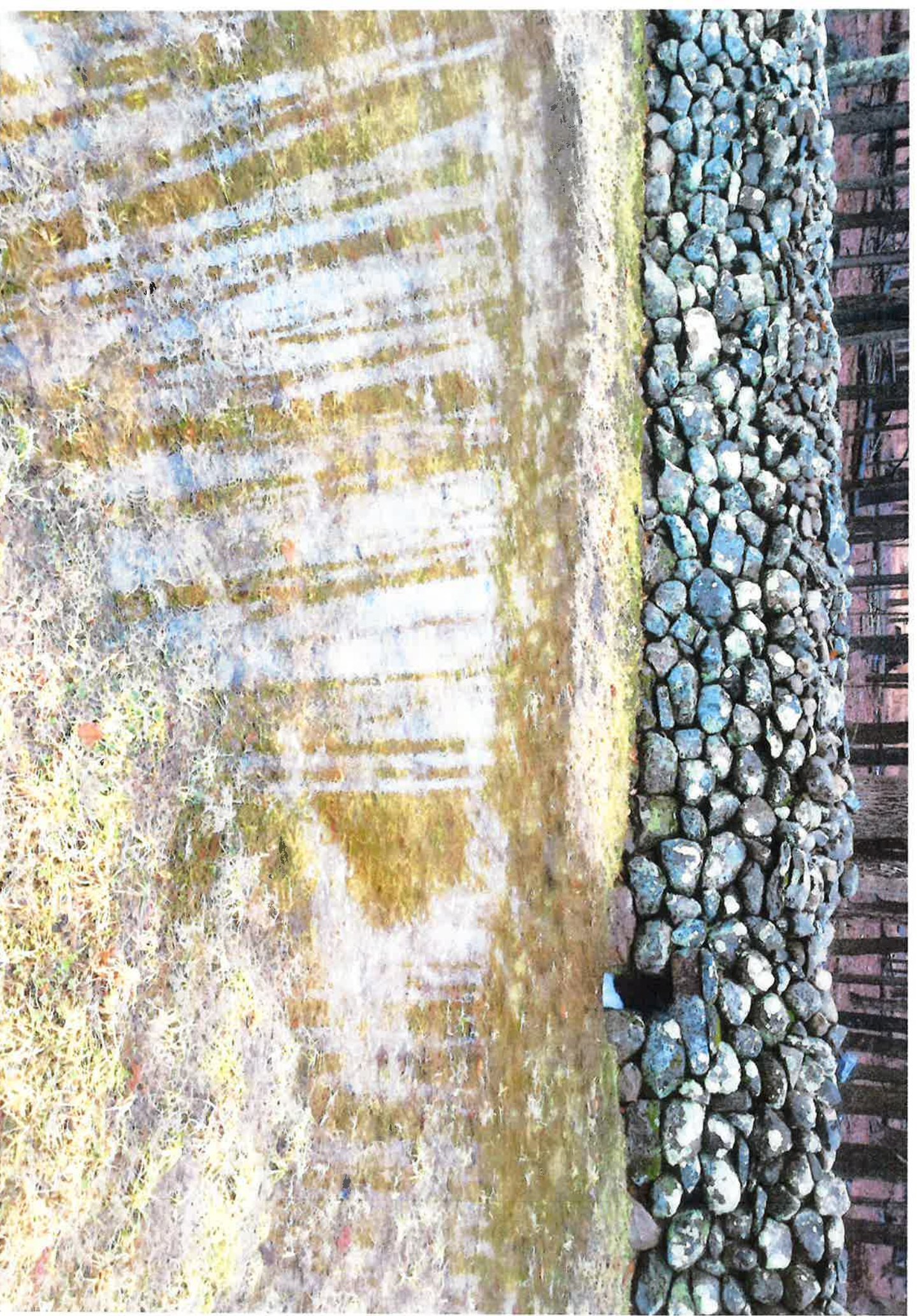
#3  
Dudash Property  
Upper and Lower Field Fence  
2/11/18





#4  
Dudash Property  
Lower Field  
2/11/18





#5

Dudash Property

Lower Field

Drain Hole Through Stone Wall

2/11/18

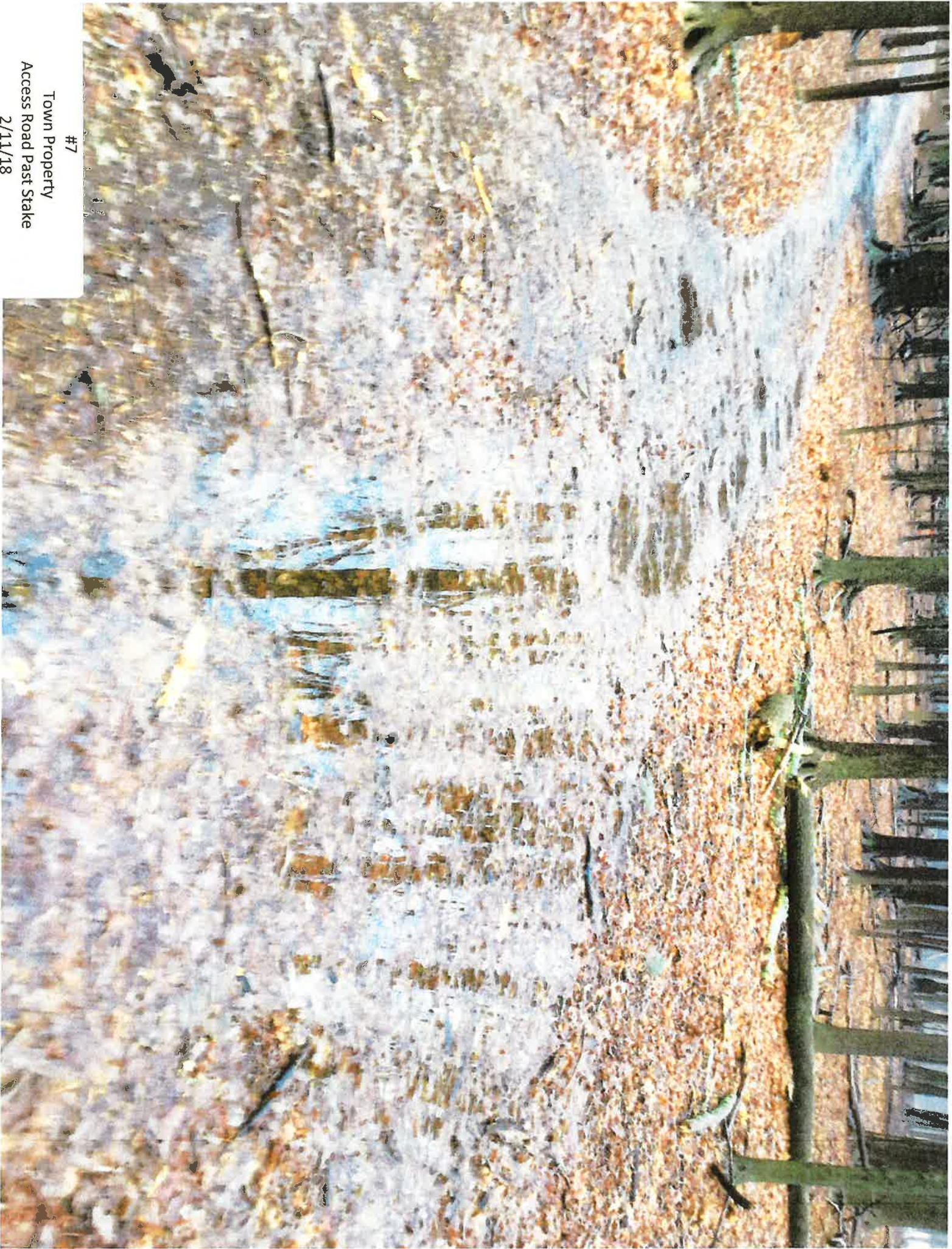
5





#6  
Town Property  
Stake on Access Road  
2/11/18

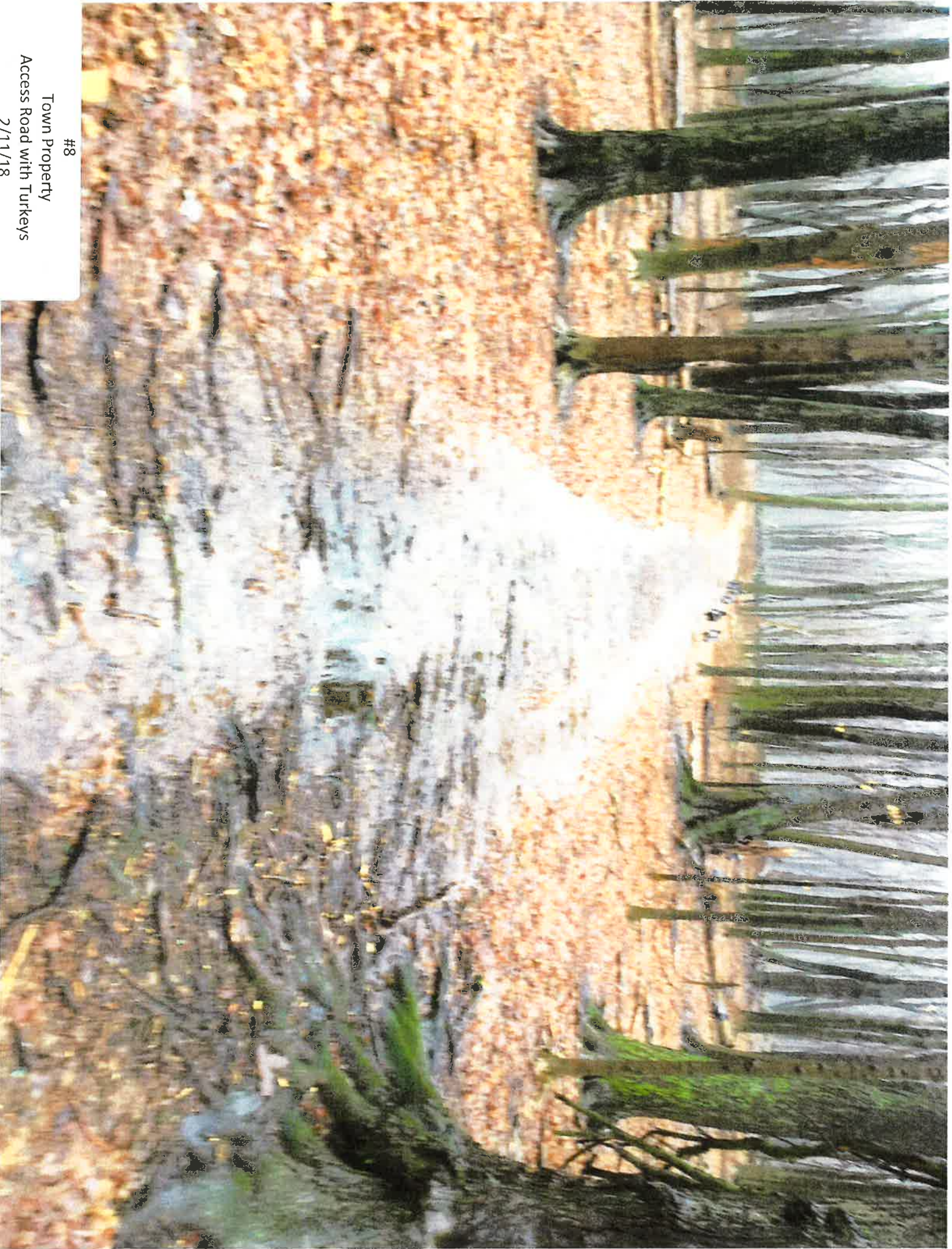




#7

Town Property  
Access Road Past Stake  
2/11/18





#8

Town Property  
Access Road with Turkeys  
2/11/18

8





#9

Town Property  
Near Lords Highway East  
2/11/18

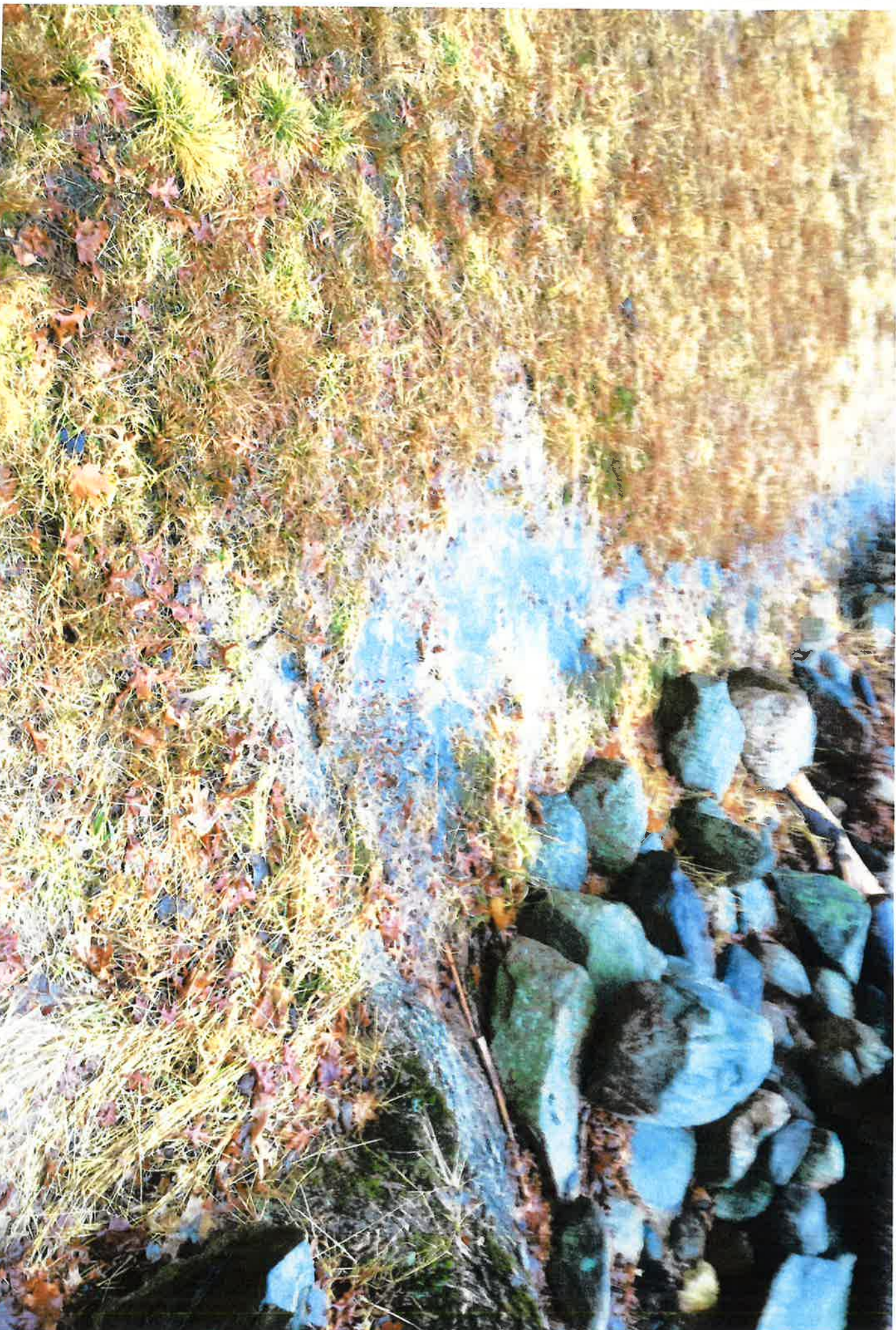


10



#10  
Town Property and Second Stone Wall  
2/11/18





#11

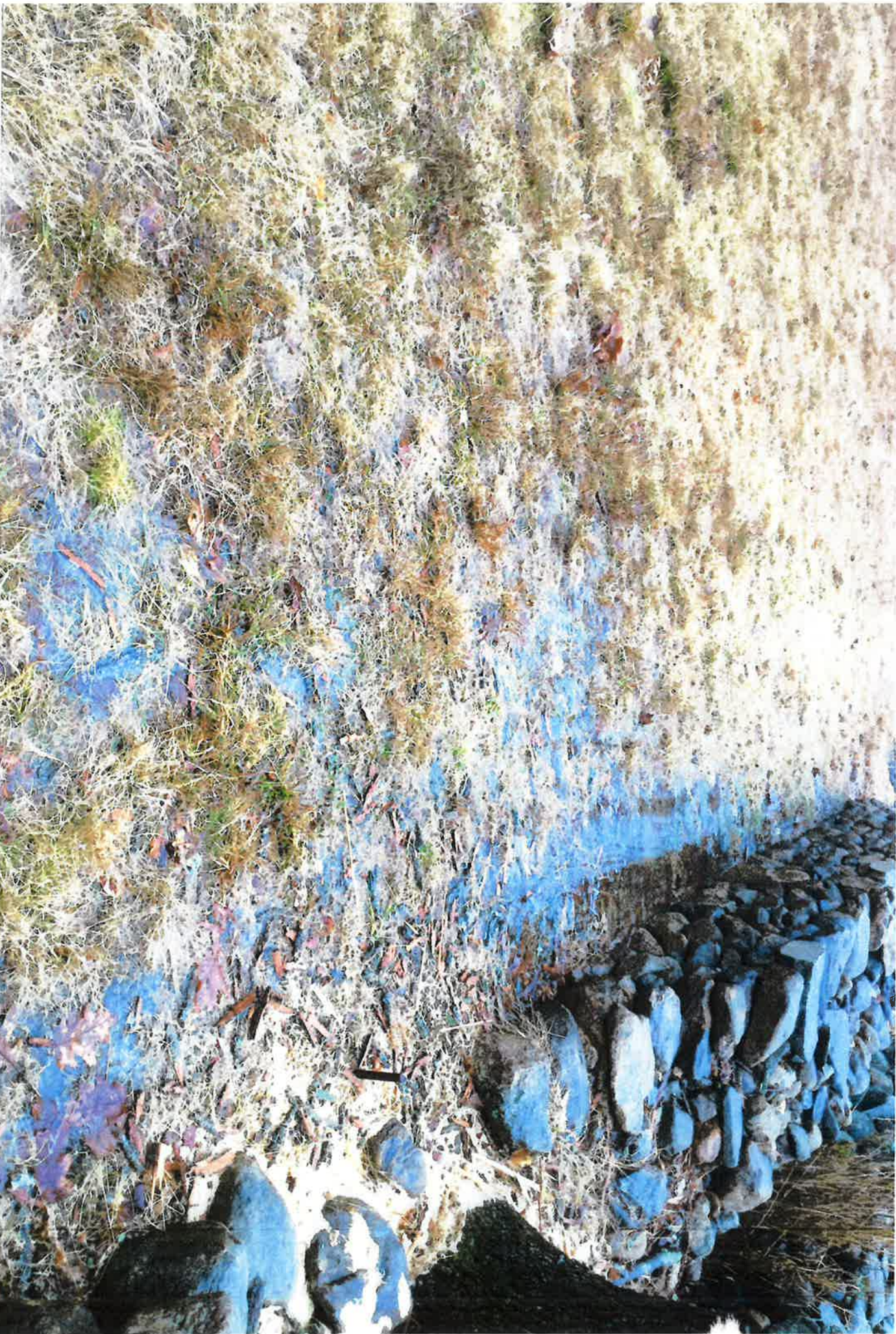
Town Property  
Further South  
2/11/18





#12  
Town Property  
South Bar Way  
2/11/18





#13  
Town Property  
South of Bar Way  
2/11/18





#14

Town Property Runoff  
West of Station 4 + 24 PT  
2/25/18

14





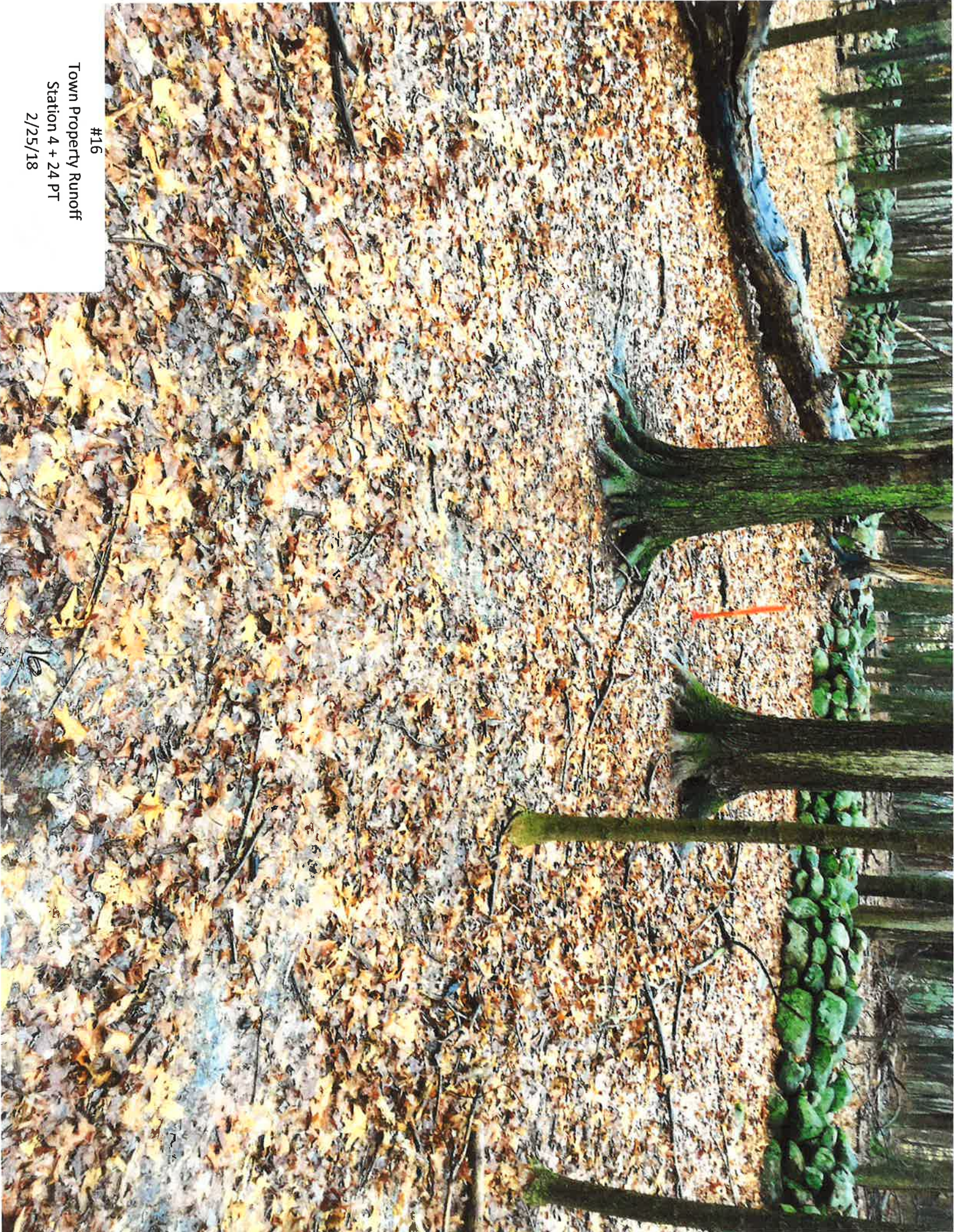
#15

Town Property Runoff

West of Station 4 + 24 PT Further East

2/25/18





#16

Town Property Runoff  
Station 4 + 24 PT  
2/25/18





#17

Town Property Runoff  
East of Station 4 + 24 PT  
2/25/18

#17



## **EXHIBIT K**

**(Thumb drive provided with original)**

**AFFIDAVIT**

STATE OF CONNECTICUT

)

ss. Weston, February 2018

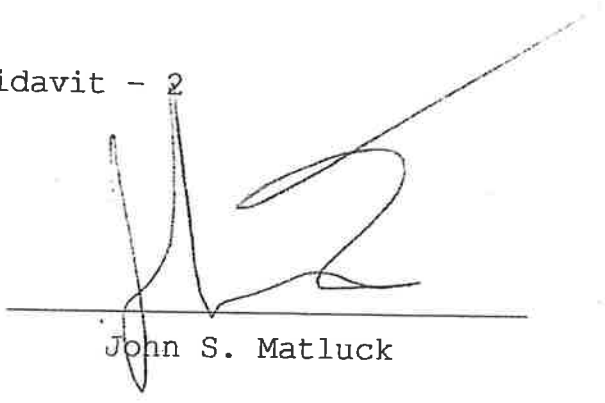
COUNTY OF FAIRFIELD

)  
)

The undersigned, being first duly sworn does depose and say that:

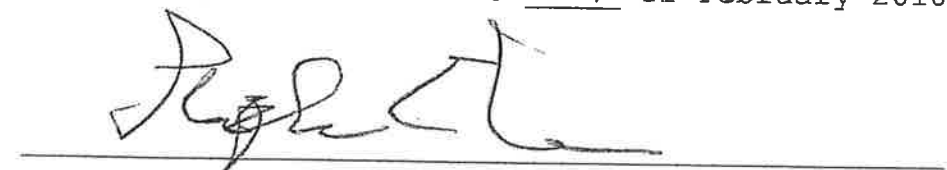
1. My name is John S. Matluck and I am an owner of the land and home where I reside at 11 Lords Highway East, Weston, Connecticut.
2. My property is located on a down gradient below the so-call "Moore Property" owned by the Town of Weston on Lords Highway East.
3. For an extended period my property has become flooded, eroded, and damaged by rain and ground water that emanates from the "Moore Property" during rain storms.
4. I observed such flooding and made videos of the source and extent of the flow during an extended period of rain that began on February 10 and continued to February 11, 2018.
5. The video files and screen captures I made on February 11, 2018 are attached to this Affidavit as Exhibit 1.

John S. Matluck Affidavit - 2



John S. Matluck

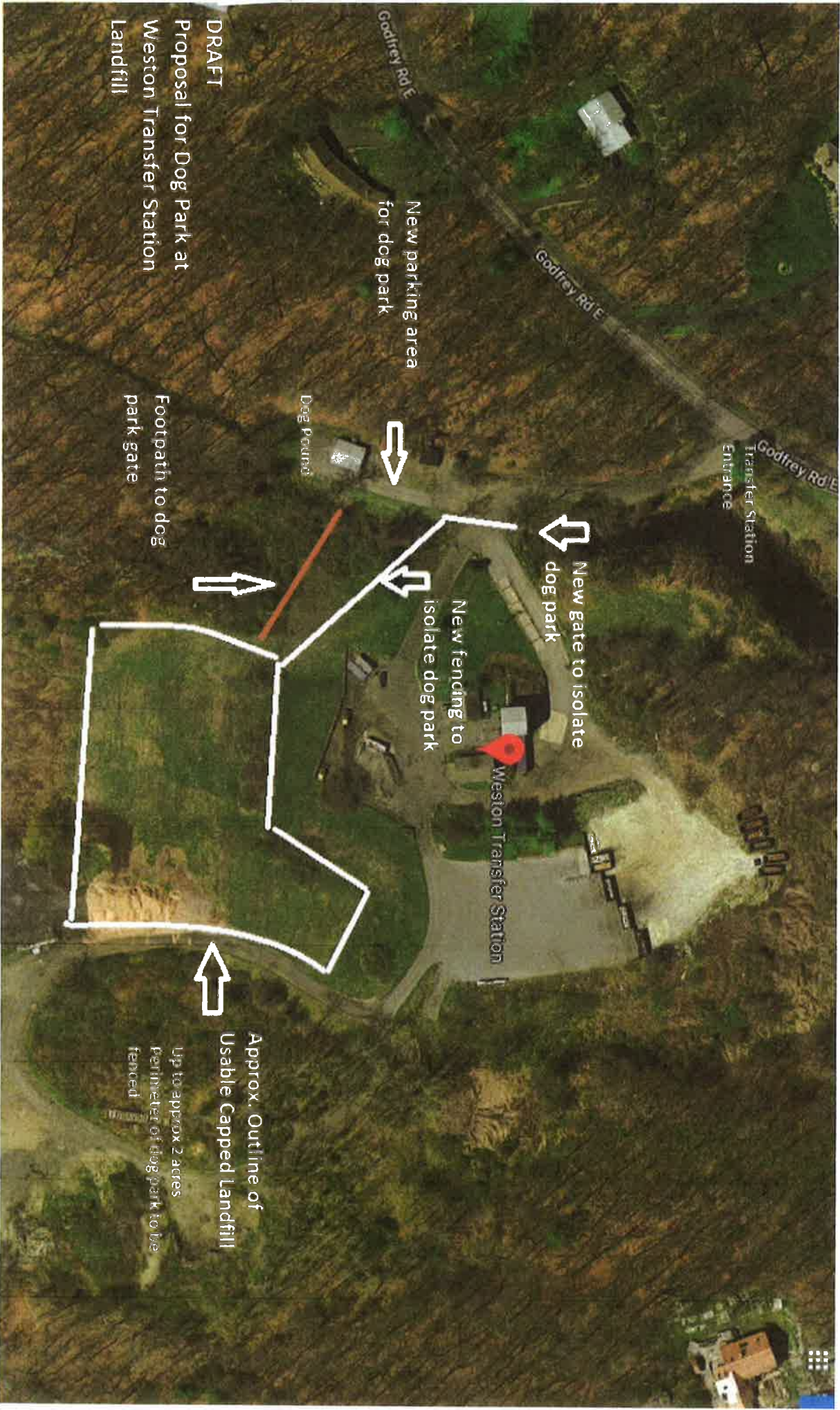
Subscribed and sworn before me this 19 of February 2018.



Stephen E. Nevas

Commissioner of the Superior Court

## **EXHIBIT L**



Transfer Station Entrance

Godfrey Rd E

New parking area for dog park

Dog Pound

New gate to isolate dog park

New fencing to isolate dog park

Weston Transfer Station

DRAFT  
Proposal for Dog Park at  
Weston Transfer Station  
Landfill

Footpath to dog park gate

Approx. Outline of Usable Capped Landfill

Up to approx 2 acres  
Perimeter of dog park to be fenced